

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BELMONT HOLDINGS CORPORATION	:	CIVIL ACTION
	:	
v.	:	
	:	
UNICARE LIFE & HEALTH INSURANCE	:	
COMPANY	:	NO. 98-2365

MEMORANDUM AND ORDER

BECHTLE, J. APRIL , 2000

Presently before the court are defendant Unicare Life & Health Insurance Company's ("Unicare") motion to dismiss and defendant Massachusetts Mutual Life Insurance Company's ("MassMutual") motion to dismiss and plaintiff Belmont Holdings Corporation's ("BHC") responses thereto. For the reasons set forth below, Unicare's motion will be granted in part and denied in part and MassMutual's motion will be denied.

I. BACKGROUND

BHC is a corporation organized under the laws of Pennsylvania with its principal place of business in Pennsylvania. Unicare is a corporation organized under the laws of Delaware with its principal place of business in California and is the successor in interest to MassMutual, a mutual life insurance company organized under the laws of Massachusetts with its principal place of business in Massachusetts.¹ On May 15,

1. This court has subject matter jurisdiction under 28 U.S.C. § 1332 because diversity of citizenship exists between the parties
(continued...)

1992, MassMutual sold insurance policy number 113526A to General Refractories Company ("GRC"). The anniversary date for this policy was June 1st of each subsequent year. In late 1994 or early 1995, RGP Holding, Inc. ("RGP") became the successor company to GRC respecting policy number 113526A and succeeded to all rights under the policy with MassMutual's consent. Effective November 1, 1994, policy number 113526A was redesignated as policy number 120210A. The anniversary date for policy number 120210A became November 1st of each subsequent year. Effective December 1, 1995, BHC succeeded to the interests of RGP under policy number 120210A with MassMutual's consent.

BHC alleges that effective November 1, 1995, the policy was changed from a fully insured minimum premium plan to a guaranteed cost dividend program. Under the latter program, BHC had a guaranteed annual minimum and maximum premium, depending on the amount of participation in the plan by BHC's employees and their dependents. If minimum premium losses did not exceed the maximum premium, MassMutual was to pay BHC a dividend for the difference.²

(...continued)

and the amount in controversy exceeds \$75,000.00. 28 U.S.C. § 1332.

² In the Amended Complaint, BHC asserts that MassMutual represented, inter alia, that the annual premium was fixed and that it would not increase the premium during a policy year. (Am. Compl. ¶¶ 12-14.)

Subsequently, Unicare acquired MassMutual.³ BHC alleges that Unicare increased the premiums for policy number 120210A effective August 1, 1997. BHC further alleges that it was forced to pay additional monthly payments of approximately \$40,000.00 beginning in August 1997 or have the policy canceled if it did not pay the additional amount. BHC also states that it was forced to agree to change the policy's annual renewal date from November 1st to August 1st, or otherwise face an additional increase in its premiums. BHC alleges that it fully performed all of its obligations under the policy.

On May 5, 1998, BHC instituted the instant action alleging claims for breach of contract, bad faith and breach of fiduciary duty. On August 24, 1998, Unicare filed a motion to dismiss BHC's Complaint for failure to state a claim on which relief could be granted. By Order dated February 5, 1999, the court dismissed Count III of the Complaint, which alleged breach of fiduciary duty.⁴ On October 5, 1999, BHC filed an Amended

³ In 1995 or 1996, MassMutual transferred its life and health insurance business to a wholly owned subsidiary, but continued to hold itself out to BHC as Massachusetts Mutual Life Insurance. (Am. Compl. ¶ 22.) In early 1996, WellPoint Health Networks, Inc., ("WellPoint") acquired the MassMutual subsidiary which was thereafter operated as Unicare, a wholly owned subsidiary of WellPoint. Id. No disclosure was made to BHC of the acquisition, and BHC did not execute any new contract. Id. Rather, Unicare represented itself as the "Unicare/Massachusetts Mutual Life Insurance Company" when the 1996-1997 policy was renewed. Id.

⁴ The February 5, 1999 Order also dismissed certain claims BHC made under Pennsylvania's bad faith statute, 42 Pa. Cons. Stat. Ann. § 8371. Specifically, the court dismissed all

(continued...)

Complaint, which added MassMutual as a defendant. The Amended Complaint also added claims for fraud, fraudulent inducement and tortious interference with contract.

On November 11, 1999, Unicare filed a motion to dismiss the claims for fraud, fraudulent inducement and bad faith in the Amended Complaint, to which BHC filed a response on November 22, 1999. On December 3, 1999, MassMutual filed a motion to dismiss all claims asserted against it, to which BHC filed its opposition on December 20, 1999. For the reasons set forth below, Unicare's motion will be granted in part and denied in part, and MassMutual's motion will be denied.

⁴(...continued)
bad faith claims that were not "premised on the manner in which claims were handled under the policy." On January 13, 2000, BHC filed a motion for reconsideration of the February 5, 1999 Order. In this motion, BHC asserts that there has been an intervening change in controlling law which expands the basis for a bad faith cause of action. Unicare filed its response on February 1, 2000.

Generally, motions for reconsideration are governed by Local Rule of Civil Procedure 7.1(g) which requires a party seeking reargument or rehearing to file a motion within 10 days of the order concerned. However, a rehearing of an interlocutory decree may be sought at any time before the entry of a final judgment, provided that due diligence has been employed by the party seeking relief and revision is consonant with principles of fairness and equity. See Johnson v. Township of Bensalem, 609 F. Supp. 1340, 1341 (E.D. Pa. 1985)(citations omitted). Nonetheless, "efficient disposition . . . demands that each stage of the litigation build on the last, and not afford an opportunity to reargue every previous ruling." Id. at 1342 n.1.

The court will dismiss the bad faith claim in its entirety because BHC has no standing under Pennsylvania's bad faith statute. Therefore, the motion for reconsideration will be denied as moot.

II. LEGAL STANDARD

For the purposes of a motion to dismiss, the court must accept as true all well-pleaded allegations of fact in a plaintiff's complaint, construe the complaint in the light most favorable to the plaintiff, and determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988). The court, however, need not accept as true legal conclusions or unwarranted factual inferences. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) (citations omitted). A complaint is properly dismissed only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

III. DISCUSSION

Unicare's motion asserts that BHC's claims for fraud, fraudulent inducement and bad faith should be dismissed. For the reasons listed below, the court will dismiss the bad faith claim against Unicare, but will not grant Unicare's motion to dismiss the fraud and fraudulent inducement claims. MassMutual's motion asserts that all claims asserted against it should be dismissed. For the reasons listed below, the court will deny MassMutual's motion.

A. Unicare's Motion to Dismiss the Claims for Fraud, Fraudulent Inducement and Bad Faith

Unicare argues that the allegations as set forth in Counts I, II and VI of BHC's Amended Complaint do not state a claim upon which relief may be granted. Count VI alleges a claim for bad faith under 42 Pa. Con. Stat. § 8371. Counts I and II allege claims for fraud and fraudulent inducement.

1. Count VI: Bad Faith

Unicare argues that BHC lacks standing to bring a cause of action under Pennsylvania's bad faith statute, 42 Pa. Cons. Stat. Ann. § 8371. Section 8371 states:

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

- (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
- (2) Award punitive damages against the insurer.
- (3) Assess court costs and attorney fees against the insurer.

42 Pa. Con. Stat. § 8371. The crux of a bad faith claim under § 8371 is the denial of coverage by an insurer when there is no reasonable basis to do so. Jung v. Nationwide Mut. Fire. Ins. Co., 949 F. Supp. 353, 356 (E.D. Pa. 1997) (stating that "'bad faith' on part of insurer is any frivolous or unfounded refusal to pay proceeds of a policy")(citations omitted). The purpose of the bad faith statute is "to provide a statutory remedy to an insured when an insurer den[ies] benefits in bad faith." General Accident Ins. Co. v. Federal Kemper Ins. Co., 682 A.2d 819, 822

(Pa. Super. Ct. 1996). Under Pennsylvania law, it is "clear that the insurer's duty to act in good faith belongs to those persons who qualify as 'insureds' under the policy." Seasor v. Liberty Mut. Ins. Co., 941 F. Supp. 488, 490 (E.D. Pa. 1996) (citing Dercoli v. Pennsylvania Nat'l Mut. Ins. Co., 554 A.2d 906 (1989)). Thus, although BHC's employees would have standing to bring a claim under the bad faith statute, BHC would have standing only if it was an "insured" under the policy.⁵

Whether one is an insured with standing to bring an action against an insurer for the bad faith denial of claims depends upon the language of the policy in question. Seasor, 941 F. Supp. at 491 (stating that "in order to bring an action for bad faith against an insurer, one must qualify as an 'insured' as that term is defined in the policy").

The documents that, according to BHC, comprise the group insurance policy contract between it and Unicare do not refer to

⁵ Similarly, BHC would not have standing to bring a cause of action for denial of employee benefits under ERISA. ERISA's civil enforcement provisions state that a civil action may be brought: "(1) by a participant or beneficiary -- . . . (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 28 U.S.C. § 132(a)(1). The Act does not provide for a civil action by an employer to recover benefits, and courts have found that an employer does not have an implied right to sue under ERISA. See, e.g., Eureka Paper Box Co. v. WBMA, Inc., 767 F. Supp. 642, 649 (M.D. Pa. 1991) (finding employers lack standing to bring ERISA action); Crown Cork and Seal Co. v. Teamsters Pension Fund, 549 F. Supp. 307, 311-12 (E.D. Pa. 1982) (finding no implied right of action for employers under ERISA).

In contrast to BHC, BHC's employees do have the right to bring any claim under ERISA for benefits against Unicare.

BHC or its predecessor as the "insured" under the policy. The original policy issued by MassMutual dated May 15, 1992 lists RGP Holdings, Inc. as the plan sponsor, and the Insuring Agreement states that "[t]he insurer agrees to pay the benefits set forth in this policy with respect to plan members." (Unicare's Reply Br. in Supp. of Mot. to Dismiss at 11 & Unicare's Br. in Supp. of Mot. to Dismiss Ex. J.) The policy definitions define a "covered person" as "a plan member or a dependent with respect to whom a plan member is insured by this policy." (Unicare's Br. in Supp. of Mot. to Dismiss Ex. J.) Rather than the insured, BHC is referred to as the "policyholder." (Unicare's Reply Br. in Supp. of Mot. to Dismiss at 12-13 & BHC's Resp. to Unicare's Mot. to Dismiss Ex. 6.) (stating "Whereas, General Refractories Company ("Policyholder") [BHC's predecessor] has an employee benefit plan ("Plan") that provides medical benefits to covered employees") The references to BHC as the "policyholder" do not establish that BHC is the "insured" under the policy. To the contrary, the Group Benefit Plan booklet establishes how one may become insured. It states:

"[t]his section tells you how you may become insured. . . . To obtain personal insurance you need to be a qualified employee. You are a "qualified employee" only if you meet all of these requirements: (1) you are a full-time employee of the plan sponsor . . . and you are in a covered employment class named in the group policy."

(Unicare's Reply Br. in Supp. of Mot. to Dismiss at 13-14 & Ex. B.) Because BHC is not the "insured" under the policy, it does not have standing to bring a "bad faith" claim under § 8371.

Seasor, 941 F. Supp. at 490 (stating that "the insurer's duty to act in good faith belongs to those persons who qualify as 'insureds' under the policy"). Further, BHC has not cited any case in which an employer asserted or had standing to assert a "bad faith" claim for benefits on behalf of its employees under § 8371. Thus, the court will dismiss Count VI of the Amended Complaint.

2. Counts I and II: Fraud and Fraudulent Inducement

Unicare argues that the Amended Complaint fails to state a claim for fraud and fraudulent inducement.⁶ In order to adequately plead the damages element of a fraud claim, the plaintiff must allege what damages he has suffered as a proximate result of the defendant's purported misrepresentation. Shapiro, 964 F.2d at 284. Damages are limited to the "actual" pecuniary loss he incurs as a result of his reliance on the truthfulness of the representation. Killian v. McCulloch, 850 F. Supp. 1239, 1252 (E.D. Pa. 1994).

Unicare contends that BHC's fraud claim as to the closing of

⁶ A claim for fraud consists of the following elements: a material misrepresentation of fact; a fraudulent utterance thereof; the maker was aware of its falsity or recklessness as to whether it was true or false; the statement was made or omitted with the intent of misleading or inducing the plaintiff into relying on it; justifiable reliance by the plaintiff on the misrepresentation; and damages to the plaintiff as a proximate result of reliance on the misrepresentation. Shapiro v. UJB Fin. Corp., 964 F.2d 272, 284 (3d Cir. 1992). A claim for fraudulent inducement adds that the misrepresentation was made with the specific intent to induce another to enter into a contract when the person had no duty to enter into the contract. In Re Allegheny Internat'l, Inc., 954 F.2d 167, 178 (3d Cir. 1992).

a claims handling office and changing a medical care provider network should be dismissed because the Amended Complaint fails to sufficiently allege that these actions adversely affected BHC as opposed to the individual employees of BHC and that this claim is "subsumed" by the bad faith cause of action. (Unicare's Br. in Supp. of its Mot. to Dismiss at 33.) Unicare also contends that BHC's allegations regarding Unicare's misrepresentations as to the premium increase and projected dividends are legally insufficient. Id. at 39. Unicare asserts that because there was no injury or damage to BHC and because BHC's claims lack specificity and particularity, they should be dismissed. Id.

In its Amended Complaint, BHC alleges that Unicare "misrepresent[ed] the manner in which its health insurance programs operated, misrepresent[ed] the terms of those programs, misrepresent[ed] the services that Unicare would perform, conceal[ed] and misrepresent[ed] the facts of and the effects on BHC of the acquisition of MassMutual's health insurance business by Unicare and by the whole course of conduct of fraud, concealment and misrepresentation set forth" in the Amended Complaint. (Am. Compl. ¶ 53.) BHC asserts that Unicare failed to reveal that it would increase BHC's premium during a policy year, close a claims office, alter a medical care provider group and not pay a dividend to BHC in an effort to increase its profits at the expense of its policyholders. (BHC's Resp. to Unicare's Mot. to Dismiss at 26-27.) Viewing the evidence under the standard required, the court will not grant Unicare's motion

to dismiss.

B. MassMutual's Motion to Dismiss All Claims Asserted Against It

Counts I, II and III of BHC's Amended Complaint are asserted against MassMutual. Counts I and II assert claims for fraud and fraudulent inducement. Count III asserts a claim for breach of contract. MassMutual asserts that these claims should be dismissed with prejudice.

1. Counts I and II: Fraud and Fraudulent Inducement

In its Amended Complaint, BHC alleges that MassMutual misrepresented the manner in which its health insurance programs operated, the terms of those programs, and the facts and effects of Unicare's acquisition of MassMutual. (BHC's Mem. in Opp'n to MassMutual's Mot. to Dismiss at 9.) MassMutual asserts that the claims for fraud and fraudulent inducement should be dismissed because: (1) they are barred by the statute of limitations, (2) they relate to promises to do something in the future, (3) they are barred by the parol evidence rule, and (4) they lack specificity.

Actions sounding in fraud must be commenced within two years. 42 Pa. Cons. Stat. Ann. § 5524(7). The limitation period will be tolled, however, until after the plaintiff discovers, or should have discovered, the existence of the claim. Beauty Time, Inc. v. Vu Skin Sys., Inc., 118 F.3d 140, 148 (3d Cir. 1997).

MassMutual asserts that BHC knew or should have known of the alleged fraud in June 1997 when Unicare informed BHC of its determination to increase BHC's premium effective August 1, 1997. (MassMutual's Mem. of Law in Supp. of its Mot. to Dismiss at 1.)⁷

The record shows, however, that in response to Unicare's proposed rate increase, BHC requested that Unicare provide the contractual provisions on which it relied to support the increase. (Am. Compl. ¶ 28.) By letter dated August 5, 1997, BHC objected to the proposed increase. Id. ¶ 35. BHC did not receive a response to this letter. Id. ¶ 37. Consequently, in October 1997, BHC paid the August 1997 premium, which was due that month, at the original rate. Id. ¶ 37. In October 1997, Unicare put BHC's account into lapse for failure to pay the increased rate. Id. ¶ 38. Thus, BHC alleges that it could not have known of the fraud until October 1997. (BHC's Mem. in Opp'n to MassMutual's Mot. to Dismiss at 11.) Viewing the evidence in the light most favorable to the plaintiff, the court will not dismiss the Amended Complaint on the ground that it is barred by the statute of limitations.

MassMutual next asserts that Counts I and II should be dismissed because they relate to promises to do something in the future. Promises to do something in the future are not actionable under Pennsylvania law. Krause v. Great Lakes

⁷ MassMutual was not made a party to this action until the filing and service of the Amended Complaint on October 5, 1999, more than two years after Unicare informed BHC of its intention to increase BHC's premium.

Holdings, Inc., 563 A.2d 1182, 1187 (Pa. Super. Ct. 1989).

MassMutual asserts that the fraud BHC alleges had to do with future promises, for example, MassMutual's alleged misrepresentation that the premium would not be increased during a policy year. (MassMutual's Mem. of Law in Supp. of its Mot. to Dismiss at 9.) BHC contends that rather than relating to a promise to do something in the future, MassMutual misrepresented how the policies operated in order to induce BHC to enter a contract. (BHC's Mem. in Opp'n to MassMutual's Mot. to Dismiss at 12.) Thus, BHC contends that the alleged misrepresentations relate to how the contract at issue was to be performed. Id. Viewing the evidence under the standard required, the court will not dismiss the Amended Complaint on this ground.

MassMutual also asserts that Counts I and II should be dismissed because BHC's evidence of fraud is barred by the parol evidence rule. The parol evidence rule "bar[s] consideration of prior representations concerning matters covered in a written contract." Dayhoff, Inc. v. H.J. Heinz Co., 86 F.3d 1287, 1300 (3d Cir. 1996). However, BHC contends that there was no written agreement regarding when dividends would be paid. (BHC's Mem. in Opp'n to MassMutual's Mot. to Dismiss at 14.)⁸ Without a writing, the parol evidence rule would not apply. See LeDonne v.

⁸ With respect to the off-anniversary premium increase, BHC contends that there is a contract controlling the issue. (BHC's Mem. in Opp'n to MassMutual's Mot. to Dismiss at 14.) If there is a contract controlling the issue, BHC asserts that under it, there could be no off-anniversary increase. Id.

Kessler, 389 A.2d 1123, 1126 (Pa. Super. Ct. 1978) (stating "the purpose of the parol evidence rule is to preserve the integrity of written agreements") (internal quotations and citations omitted).⁹

The parol evidence rule is based on the assumption that a written contract contains the full, exact, integrated agreement of the parties. In re Slavinski's Estate, 218 A.2d 125, 128 (Pa. 1966); Friestad v. Travelers Indem. Co., 393 A.2d 1212, 1218 (Pa. Super. Ct. 1978). Where a written agreement does not contain the entire contract between the parties, "parol evidence is admissible to explain and supplement [the] written agreement." In re Slavinski's Estate, 218 A.2d at 128. Where, as here, the parties dispute which, if any, documents contain their entire agreement, the parol evidence rule will not act as a bar. Thus, the court will not dismiss the Amended Complaint on the ground that BHC's evidence of fraud is barred by the parol evidence rule.

Finally, the court finds that the Amended Complaint alleges fraud and fraudulent inducement with sufficient specificity. See Seville Indus. Machinery Corp. v. South Most Machinery Corp., 742 F.2d 786, 791 (3d Cir. 1984) (stating that "focusing exclusively on the 'particularity' language 'is too narrow an approach and fails to take account of the general simplicity and flexibility

⁹ The parties also dispute which documents constitute the contract. (BHC's Resp. to Unicare's Mot. to Dismiss at 16, stating "there is a dispute over what documents constitute the contract.")

contemplated by the rules'" and that plaintiffs must "place the defendants on notice of the precise misconduct with which they are charged") (citations omitted). Accordingly, the court will not dismiss the Amended Complaint on this ground.

2. Count III: Breach of Contract

MassMutual asserts that the breach of contract claim should be dismissed because (1) there is no privity of contract between BHC and MassMutual, (2) the breach was accomplished by Unicare and (3) it is barred by the statute of limitations.

Under Pennsylvania law, "one cannot be liable for a breach of contract unless one is a party to that contract." Electron Energy Corp. v. Short, 597 A.2d 175, 177 (Pa. Super. Ct. 1991). MassMutual asserts that because it is "no longer a party to the contract at issue" it cannot be liable for breach. (MassMutual's Mem. of Law in Supp. of Mot. to Dismiss at 11.) MassMutual also asserts that because Unicare succeeded to MassMutual's obligations and because the breach was accomplished by Unicare, BHC's breach of contract claim against MassMutual should be dismissed. Id. at 12-13. However, BHC contends that it has a breach of contract claim against MassMutual because MassMutual issued the policy. (BHC's Mem. of Law in Opp'n to MassMutual's Mot. to Dismiss at 16.) Further, after Unicare acquired MassMutual, the company represented itself as the "Unicare/Massachusetts Mutual Life Insurance Company." Id. BHC did not execute a new contract or novation, and alleges that no disclosure of Unicare's acquisition was made. Id.

Viewing the evidence in the light most favorable to plaintiff, the court finds that BHC has presented sufficient evidence to show that MassMutual may have owed a contractual duty to BHC. Accordingly, the court will not dismiss the Amended Complaint on this ground.

Finally, MassMutual asserts that BHC's breach of contract allegation against MassMutual is barred by the statute of limitations. (MassMutual's Mem. of Law in Supp. of Mot. to Dismiss at 3.) Under Pennsylvania law, a breach of contract claim must be commenced within four years. 42 Pa. Cons. Stat. Ann. § 5525. MassMutual contends that the only conduct in the Amended Complaint directed against MassMutual is the alleged misrepresentations that occurred in the "fall of 1995." (MassMutual's Mem. of Law in Supp. of Mot. to Dismiss at 13, citing Am. Compl. at ¶¶ 12-20.) MassMutual was added as a defendant four years later, on October 5, 1999. However, BHC contends that, as to the dividend issue, the contract could not have been breached until November 1996, after the expiration of the 1995-1996 policy year. (BHC's Mem. of Law in Opp'n to MassMutual's Mot. to Dismiss at 17-18.) BHC adds that the dividend calculation could not be made until the 1995-1996 policy costs and claims payments were completed. *Id.* at 18; Am. Compl. ¶¶ 18-19. Accordingly, the court will not dismiss the Amended Complaint on this ground.

III. CONCLUSION

For the reasons set forth above, Unicare's motion to dismiss will be granted in part and denied in part and MassMutual's motion to dismiss will be denied. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BELMONT HOLDINGS CORPORATION	:	CIVIL ACTION
	:	
v.	:	
	:	
UNICARE LIFE & HEALTH INSURANCE	:	
COMPANY	:	NO. 98-2365

ORDER

AND NOW, TO WIT, this day of April, 2000, upon consideration of defendant Unicare Life and Health Insurance Company's ("Unicare") motion to dismiss and plaintiff Belmont Holdings Corporation's ("BHC") response thereto, and upon consideration of defendant Massachusetts Mutual Life Insurance Company's ("MassMutual") Motion to Dismiss and plaintiff BHC's response thereto, IT IS ORDERED that:

- 1) Unicare's motion for leave to file a reply brief in support of its motion to dismiss is GRANTED. Unicare's reply brief is hereby incorporated into the motion to dismiss.
- 2) Unicare's motion to dismiss Count VI of the Amended Complaint is GRANTED.
- 3) Unicare's motion to dismiss Count I and Count II of the Amended Complaint is DENIED.
- 4) BHC's motion for reconsideration of the February 5, 1999 Order is DENIED AS MOOT.
- 5) MassMutual's motion for leave to file a reply brief in support of its motion to dismiss is GRANTED. MassMutual's reply brief is hereby incorporated into

its motion to dismiss.

- 6) MassMutual's motion to dismiss all claims asserted against it in the Amended Complaint is DENIED.

LOUIS C. BECHTLE, J.